United Nations CCPR/C/SR.3046

International Covenant on Civil and Political Rights

Distr.: General
19 March 2014

Original: English

Human Rights Committee
[illegible] session

Summary record of the 3046th meeting
Held at the Palais des Nations, Geneva, on Friday, 14 March 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

Fourth periodic report of the United States of America (continued)
(CCPR/C/USA/4; CCPR/C/USA/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the United States of America took places at the Committee table.*

2. **Ms. McLeod** (United States) said that her Government fully subscribed to the principle that States parties must implement their treaty obligations in good faith. However, under international treaty law it was the role of States parties to interpret the provisions of the treaties they ratified, unless the treaty stated otherwise, which the Covenant did not. While the United States and the Committee held principled differences of views regarding certain provisions, her Government respected the Committee's role and valued its views.

3. **Mr. Gross** (United States) said that every six months a review board assessed the conditions of detention of third-country nationals held by the United States in Afghanistan, while Afghan nationals had already been transferred to the custody of the Government of Afghanistan. A personal representative was appointed to assist detainees when they appeared before the review board. The detainees who remained at the facility in Guantánamo Bay continued to be detained lawfully. About 80 per cent of all detainees at that facility had been repatriated or resettled. The decision was made to transfer a detainee if senior Government officials judged that the threat posed by the detainee could be sufficiently mitigated by security measures taken in the receiving country. While no detainees currently held at Guantánamo had been cleared for release, a periodic review board process was under way to determine whether their continued detention was necessary. His Government had determined that current military practices were consistent with the provisions of the 1949 Geneva Conventions and Additional Protocol II to those Conventions. Military commissions at Guantánamo provided fundamental guarantees, such as the presumption of innocence and a prohibition of the use of coerced evidence.

4. President Obama had recently appointed two special envoys to continue to work towards the goal of closing the Guantánamo facility. Following the lifting of the moratorium on the transfer of Yemeni detainees, an inter-agency working group would review the detention of those detainees on a case-by-case basis. The Government had established appropriate procedures for the medical treatment of detainees at Guantánamo experiencing the adverse health effects of significant weight loss, including those on hunger strike. While federal litigation on the issue was ongoing, the procedures used were comparable to those used in the ordinary criminal justice system, which had been deemed lawful.

5. The United States was not currently detaining any person under 18 years of age in the context of armed conflict. On the occasions when it did so, it was to prevent them from returning to the battlefield and not to charge them with crimes. President Obama did not intend to remain on a perpetual war footing and had announced his plans for transition out of hostilities in Afghanistan by the end of 2014. Claims for compensation lodged by detainees, civilians or combatants were addressed under international humanitarian law. It was not the case that all military-age males in the vicinity of a target were deemed to be combatants.

6. **Mr. Washburn** (United States) said that in 2010 his Government had announced its support for the United Nations Declaration on the Rights of Indigenous Peoples, including the provision on free, prior and informed consent. All federal agencies had established policies on tribal consultations. Every year, President Obama met with tribal leaders at the

White House Tribal Nations Conference. The most recent Conference, held in November 2013, had been attended by representatives of the Forest Service and the Bureau of Land Management. While consultations did not always result in the satisfaction of indigenous peoples' demands, the compromises agreed on were always less harmful than the original action proposed.

7. By law, the power of tribal governments was strongest on their own tribal lands; in disputes concerning other lands the situation was more complex. In an effort to address that issue, the Obama Administration had thus far restored more than 250,000 acres of land to Indian tribes. While mining and other extractive industries had the potential to inflict great harm, indigenous peoples often took positions on both sides of the issue for economic reasons. For example, the Grand Canyon was a national treasure for all Americans, and any mining there would be subject to consultations both with Indian tribes and with the general public.

8. **Ms. Jones** (United States) said that federal law prohibited non-consensual medical treatment, but the specific rules on the question were largely governed by state law. The Protection and Advocacy for Individuals with Mental Illness Program operated throughout the country and supported state projects to investigate claims of human rights violations in mental health service settings. In 2012 the Program had received more than 18,000 complaints, of which about 13,000 had been settled. Medicare regulations set out detailed restrictions on the use of restraints to manage behaviour or restrict freedom of movement in hospitals, and implementation of those regulations was monitored by the Centers for Medicare and Medicaid Services. Comprehensive mental health services had been expanded since 2000 and would be expanded further under the Affordable Care Act. Many mental health facilities had eliminated or reduced the use of traumatizing or coercive practices. Strict regulations governed the conditions under which psychiatric medication could be involuntarily administered to inmates in federal prisons.

9. While there was no national paid maternity leave programme, the law provided flexibility so that employers could offer such leave if they so chose, while employees who did not wish to take maternity leave were not required to do so.

10. **Ms. Ramlogan** (United States) said that the Department of Homeland Security prioritized the removal of criminal aliens, recent illegal entrants and those who posed a threat to American communities, and that 98 per cent of the persons removed in 2013 had belonged to one of those three categories. In order to ensure public safety and attendance at removal hearings, some individuals were detained pending a decision on whether they should be removed. Steps had been taken to ensure that detention conditions were safe, secure and humane. Proceedings were under way in several courts in cases concerning detention prior to a removal order, and some courts had determined that bond hearings were required in such cases.

11. While Congress funded 34,000 detention beds per day, the actual number of detainees fluctuated. On any given day, 92 per cent of the detention space available was occupied by individuals subject to mandatory detention. Regarding the detention of asylum seekers, anyone who demonstrated a fear of persecution would be considered for release from detention, with very few exceptions. In 2013, the Department of Homeland Security had established policies and procedures to ensure that the parental rights of non-citizens were not impeded.

12. **Ms. Mack** (United States) said that no final decision had been taken on whether to release the report of the Police Executive Research Forum on the use of force. Following the 2010 Haiti earthquake, the Department of Homeland Security had halted all removals to Haiti and granted temporary protected status to Haitian nationals, which had been extended until January 2016. Removals to Haiti had resumed in early 2011, mainly affecting

perpetrators of serious offences. Her Government worked in cooperation with the Government of Haiti and NGOs to ensure that Haitians were returned in a safe and humane manner.

13. Her Government was taking measures to stop the trafficking and exploitation of workers. Regulations governing the H-2B worker visa programme prohibited abuses such as passing recruitment costs on to workers. While the National Labor Relations Act did exclude certain agricultural and domestic workers, those workers were covered by other federal statutes such as the Fair Labor Standards Act, and the limited reach of the National Labor Relations Act did not restrict the right to form trade unions for those not covered.

14. Non-citizens in removal proceedings could be represented by counsel of their choosing at no expense to the Government, and various steps had been taken to encourage pro bono legal representation for such persons. Judges were required to ensure that persons subject to removal proceedings were informed of potential forms of relief from deportation or removal. A video outlining the immigration removal process, entitled "Know Your Rights", was shown in English and Spanish to all detainees in facilities that held immigrants for more than 72 hours. Access to legal representation would be improved by the Senate's passage of the comprehensive immigration bill in 2013.

15. **Mr. Swartz** (United States) said that extradition was governed by treaty and administered by career professionals; in his Government's view, it did not raise any issues under the Covenant. Regarding the specific extradition cases mentioned by the Committee, Dr. Asch had been charged with mail fraud and tax evasion in relation to practices at the fertility clinic he ran, where embryos were allegedly transferred from female patients to other female patients without their knowledge or consent. His Government believed that the case was proceeding according to normal criminal procedures. The Supreme Court of Bolivia had stated that a supplemental request would be presented to the United States for the extradition of the former President of that country.

16. His Government was committed to preventing and prosecuting any abuses of solitary confinement. Prisoners must receive due process during disciplinary procedures before being placed in solitary confinement, and they must be kept in adequate conditions. While the Federal Bureau of Prisons did not house juveniles, 125 juveniles were currently under its charge and were being held in contracted facilities subject to restrictions on their conditions of confinement. Minors could be placed in solitary confinement only if that was necessary to protect themselves or others.

17. **Mr. Austin** (United States) said that the Federal Government did intervene in actions by state and local governments that it believed to be illegal. For example, in February 2014 it had issued findings on the illegal use of solitary confinement in Pennsylvania, and it was working with that State's government to bring its practices in line with United States law.

18. **Mr. Swartz** (United States) said that the vast majority of minors in conflict with the law were dealt with through the juvenile justice system; only in exceptional cases were they tried in adult courts. Various factors were taken into consideration when deciding whether to try them as adults, such as their age and prior criminal record and the seriousness of their offence. The National Centre for Youth in Custody provided free training and policy advice to state and local juvenile justice systems and had conducted a series of studies that suggested that the transfer of young people to adult courts might increase recidivism. The Prison Rape Elimination Act established important safeguards to protect young people in both juvenile and adult facilities. Minors in adult detention facilities must be kept separate from adults.

19. His Government took the position that the decisions in both the *Miller v. Alabama* and the *Graham v. Florida* court cases should be applied retroactively to persons serving

life sentences for offences committed when they had been minors, and legislation to implement those decisions was currently being drafted. However, the United States Sentencing Commission had not so far made any recommendation to revise the existing statutes on life sentences without possibility of parole for adult offenders.

20. The intelligence activities of the National Security Agency were the subject of ongoing debate. The intelligence programmes in question were lawful under United States law, involved gathering information only for foreign intelligence or counter-intelligence purposes, and did not challenge the freedom of expression or disadvantage any particular group on discriminatory grounds. The programmes were subject to rigorous oversight at multiple levels, including executive, congressional and judicial, for example through the Foreign Intelligence Surveillance Court.

21. At the close of a review of the operations of the State party's security agencies in January 2014, President Obama had announced a series of supplementary safeguards. Some had been put into immediate effect by Presidential directive and the remainder would be sent to Congress for consideration. The President had announced that the approach to the collection of metadata from telephone communications would be altered. The metadata could, in any case, be accessed only for counter-terrorism purposes and had been used only on limited occasions. Similarly, the bulk collection of communications data was carried out for strictly defined national security purposes. Mr. Obama had underlined that the safeguards would apply worldwide. On the subject of mental torture, including through the use of mind-altering drugs, he said that the State party had endeavoured to ensure that the full range of conduct in that regard was addressed by national legislation.

22. **Mr. Austin** (United States) said that the "stop-and-frisk" lawsuit involving New York City and the New York Police Department had been returned to the District Court, where a resolution including provision for a mechanism to monitor compliance would be the likely outcome. New York City, however, had not withdrawn its appeal against the original ruling in the case.

23. The use of corporal punishment and restraint in schools was a matter for the states, 30 of which had outlawed it. The Federal Government was committed to promoting equal access to education for children with disabilities and was asking the remaining states to minimize the use of corporal restraint in schools. The Department of Education had issued a guidance document on non-discrimination in schools. There was, however, a need to strike a balance between access to education for all and discipline. Corporal punishment in the home was accepted in the United States, but parenting programmes and home visitation providers sought to guide parents away from physical punishment.

24. Combating domestic violence and protecting women from violence, including sexual assault, dating violence and stalking, was a high priority for the Government, as were the provision of compensation for victims and the prosecution of perpetrators. President Obama had recently appointed, for the first time in the country's history, an adviser on violence against women to work with the law enforcement agencies. The Office on Violence against Women in the Department of Justice had thus far awarded more than US$ 4.7 billion in grants for victim services and had adopted a multifaceted approach in order to implement the 1994 Violence against Women Act, which had been strengthened in 2013. Federal, state and local police forces worked closely with prosecutors and victims' rights associations to combat the problem effectively.

25. **Mr. Hood** (United States) said that federal grants had been used to finance awareness programmes in schools in the State of Mississippi aimed at preventing domestic violence. The State's protective order registry and registry of conviction orders were linked to a system of background checks for gun ownership, which aimed to prevent the sale of firearms to persons with a criminal record. Other states were implementing similar systems,

which in Mississippi had led to a significant decrease in the number of cases of domestic homicide. Responding to a question by Mr. Kälin, he said that Phenobarbital was approved by the Food and Drug Administration for use as an anaesthetic.

26. In most states where corporal punishment was still permitted in schools, parents could elect to have their children exempted. Children suspended from school in Mississippi were sent to alternative schools so that they might continue to receive an education. Legislation relating to juveniles who had received sentences of life imprisonment without parole was retroactive in Mississippi and all offenders who had received such sentences when under the age of 18 would be resentenced. Recent "stand your ground laws" passed in some states had gone beyond the original intention of earlier legislation on the matter. Mississippi had long-standing and satisfactory self-defence legislation, which complied with the Covenant, and had not adopted more recent, standardized models.

27. **Mr. Austin** (United States) said that, under the Constitution, the Federal Government and the states were responsible for determining voting rights. Congress was entitled to pass laws in that regard. Since the landmark Shelby County decision, federal lawsuits had been brought under the Voting Rights Act against states that had changed State voting laws. Persons convicted of crimes were not necessarily informed before sentencing that they would lose their right to vote. Whether residents of Washington D.C. should be afforded voting rights in Congress remained a subject of conjecture.

28. The current Administration was committed to removing barriers to reproductive health-care services, including abortion. Persons denying such access had been successfully prosecuted under the Freedom of Access to Clinic Entrances Act. The Department of Education was investigating allegations relating to violations of the right to freedom of expression in four federally-funded universities. To date, it had found no evidence for the allegations in three of them. It was Department policy that freedom of opinion must be upheld in all educational institutions.

29. **Mr. Becker** (United States) said that a variety of mechanisms for reviewing complaints of excessive use of force by law enforcement officials operated in cities across the country. Police officers were trained on how to react appropriately in violent situations and on the limits imposed on the use of force. In Salt Lake City, complaints regarding the excessive use of force by law enforcement officials were subject to internal police review. They could also be considered by the independent Civilian Review Board, the conclusions of which were forwarded to the mayor and chief of police. Its decisions were, as a rule, implemented and action could include dismissal of the police officers concerned.

30. **Mr. Austin** (United States) said that the Civil Rights Division of the Department of Justice had agreements with law enforcement agencies and penitentiary establishments providing for effective complaint mechanisms.

31. The Federal Government was working tirelessly through Government bodies such as the departments of State, Justice and Labor, and with NGOs and other Governments, in particular that of Mexico, to combat human trafficking. Most states in the State party had passed anti-trafficking laws. The provision of counselling, housing and education for victims, the prosecution of perpetrators and the training of law enforcement officials to identify victims of human trafficking were all important elements of the State party's strategy to curb the scourge of trafficking. Although prostitution was a crime in the United States, the authorities adopted a victim-centred approach to the matter.

32. **Mr. Kälin** asked whether it was true that asylum seekers were released from detention only when asylum was granted. Did mandatory deportation of foreign nationals whose asylum applications failed to apply even to those who had committed only minor offences or whose dependants were United States citizens? Surely it was inhumane to hand persons over to another State knowing that they would be tortured or murdered.

33. **Ms. Majodina** asked when the Guantánamo Bay prison facility might eventually be closed and, if it was, whether the State party would then renounce the practice of administrative detention. It was surprising that the states could each regulate the non-consensual administration of medication. Had any of them considered prohibiting the practice, as had been recommended by the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment in 2013? The Federal Government should ensure that such recommendations were taken seriously by the states. Federal regulations regarding the use of solitary confinement did not comply with the Covenant and there was no requirement to separate juveniles from adults in places of detention. The Prison Rape Elimination Act had achieved little and none of the states had certified that it was in compliance with the Covenant in that regard. As a result, people as young as 16 were being tried in the adult justice system.

34. **Mr. Shany** asked whether the Department of Justice had considered opposing the broad application of sentences to life imprisonment without parole before the Sentencing Commission. He would like to know under what specific law the perpetrators of acts of mental torture could be prosecuted. He also asked whether persons wrongfully serving prison sentences were made aware of the possibility of the restoration of their rights. Noting that the delegation did not contest the fact that it was not in compliance with the Covenant with regard to the voting rights of residents of Washington D.C., he suggested that there was no political will to remedy the situation. The State party should give greater weight to the Covenant rather than leaving it hostage to the political whims of Congress.

35. **Mr. Salvioli** said that article 9 of the Covenant covered cases of persons who were tried repeatedly for the same alleged offences, which constituted deprivation of liberty. He asked whether the State party intended to make an official apology to its indigenous peoples for its treatment of them in the past.

36. **The Chairperson**, speaking as a member of the Committee, asked whether the policy of prosecuting prostitutes in the State party did not make it difficult to identify victims of trafficking and to track down traffickers.

The meeting was suspended at 4.45 p.m. and resumed at 4.55 p.m.

37. **Ms. Ramlogan** (United States) said that immigration officers assessed in the first instance whether asylum seekers had a well-founded fear of returning to their home country, and took that into consideration when deciding whether to release them from detention. Decisions on the forced removal of individuals were taken by Department of Homeland Security officers on a case-by-case basis, and included consideration of whether they had community ties in the United States and/or had a spouse, children or parents with United States citizenship or who were permanently resident in the State party. Their criminal record was also taken into account.

38. **Mr. Swartz** (United States) said that the procedure in place for dealing with extradition requests, which was governed by treaty and subject to judicial review, provided individuals with sufficient means to challenge their extradition. His Government was therefore of the view that neither of the two particular cases that had been raised reached the level of a matter appropriate for review by the Committee. With regard to non-refoulement, he wished to make clear that his Government fully understood, and remained committed to, its obligations in that regard.

39. As to life sentences without parole, there were currently no proposals made to or by the Sentencing Commission in that connection. He stressed, however, that the Attorney General constantly considered how sentencing could most appropriately be administered to ensure that justice was done.

40. On the question of obligations regarding mental torture at the federal and other levels of government, it was indeed the case that the provisions of the Torture Victim Protection Act did not fully cover the scope of the legal remedies available. For instance, regarding mental torture committed within the United States, a number of possibilities for prosecution existed under various pieces of legislation covering conduct violating constitutional rights, in particular the right to be free from cruel and unusual punishment. At the state level, there were a variety of laws that might be applicable, such as state assault laws and stalking laws. A number of states had, in a variety of contexts, enacted provisions that were in line with those contained in the American Law Institute's Model Penal Code, which suggested that assault should include attempts by physical menace to put another in fear of imminent serious bodily injury.

41. **Mr. Gross** (United States), responding to a question regarding continued detention, said that under the Authorization for the Use of Military Force Statute his Government retained the authority to detain enemy personnel as long as the United States remained in an armed conflict with Al-Qaida and its associated forces.

42. **Ms. Jones** (United States) said that her delegation was currently unaware of any states that had taken action in response to the recommendation made by the Special Rapporteur on Torture to the effect that a ban should be imposed on all non-consensual medical treatment.

43. **Mr. Austin** (United States) said that there was no national requirement for juveniles to be kept separate from adult offenders in detention. In practice, however, at the federal level no juveniles were detained in prisons and those in other places of detention were held separately from adults. At the state level, the Government worked closely with the authorities, providing training, guidance and incentives to ensure that such separation was maintained.

44. **Mr. Hood** (United States), referring to practice in the State of Mississippi, said that although juveniles could in some instances be held in a prison facility, they must be kept out of sight and sound of adult inmates. He had been unable to obtain information as to whether such a rule was being applied in other states but he would raise the question with the National Association of Attorneys General.

45. As to the question of the treatment of victims of human trafficking, a special unit within the Attorney General's Office provided all law enforcement officials in Mississippi with training on handling trafficking situations to ensure that those involved were treated as victims and received appropriate services, including medical care. It was only in the event of a failure on the part of victims to cooperate with the authorities that prosecutions would be brought against them in an attempt to identify the perpetrators of the crimes concerned.

46. **Mr. Austin** (United States) said that a "victim-first approach" was also aligned at the federal level when dealing with individuals who were truly trafficking victims. In the case of victims who were United States nationals this approach allowed for, among other things, the provision of relevant services and charges to be removed. With respect to aliens, the Department of Homeland Security granted victims of trafficking both short and long-term immigration benefits in the form of T and U visas.

47. There was no national guarantee ensuring that defendants and prisoners were made aware of the loss of the right to vote. However, in practice, whenever defendants took a plea or were sentenced, they were informed of the fact that they would lose certain constitutional rights. Furthermore, the American Bar Association had launched a website entitled the National Inventory on the Collateral Consequences of Conviction as part of an effort to help defence lawyers fully inform their clients of, inter alia, any rights they would lose as the result of a conviction for a crime.